



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/173029

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 22, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on May 26, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly budgeted petitioner's FS effective April 1, 2016.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner receives FS as a household of 2. In April and May 2016, petitioner received \$1412.90 monthly in Social Security income.
3. On March 18, 2016 the agency issued a notice to petitioner stating that her FS for April would be reduced to \$16 monthly.

### DISCUSSION

All FS benefits are calculated pursuant to 7 C.F.R. §273.9. The maximum FS allotment amounts, based on household size, are listed at *FoodShare Wisconsin Handbook*, §8.1.2. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In calculating the petitioner's allotment, the agency must follow the procedure set by the federal FS regulations, which is restated in the *FS Handbook*. In determining the amount of FS to be issued each month, the agency must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. Petitioner received the standard deduction, the earned income deduction, the medical deduction and the shelter expense deduction. See Exhibit 1 (FS budget for April).

Petitioner's concern at hearing was the decrease in FS to \$16. As explained at hearing, the reason her FS reduced was due to the agency no longer counting her Medicare Part D as a medical expense. This was not allowed as an expense because the Social Security confirmed with the agency that it was not taking it from her check, and had not been since December 2015. The agency presented the budget screens to show how it determined petitioner's FS. Petitioner did not dispute the income used for April or May, nor contest the budgets.

I have reviewed the information and as explained at hearing, it appears that the agency incorrectly included self-employment income for the months of April and May. On this basis I am remanding this matter. It also appears, although it was not discussed at hearing, that the agency had previously been budgeting \$500 in shelter costs for March. The shelter expense was reported to be \$250 due to property taxes. If March's shelter costs were not \$500, this larger expense likely led to a greater amount of FS in March as well. Further, because the self-employment was added in, petitioner got the benefit of the earned income deduction. They will not get this deduction when the agency redetermines FS without the self-employment income for April and May.

I add that while I understand petitioner may find the allotment unfair, I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the outcome here because petitioner thinks it would be fair.

I remind the petitioner that if her income decreases, has excess medical expenses that qualify for a deduction, or has other changes to her household, she must report and verify that to the agency so her FS can be redetermined.

### **CONCLUSIONS OF LAW**

The agency did not correctly budget petitioner's FS effective April 1, 2016 as it incorrectly included self-employment income.

**THEREFORE, it is**

### **ORDERED**

That the matter is remanded to the agency to (1) redetermine petitioner's FS effective April 1, 2016 and ongoing, removing the self-employment income from the calculation, (2) issue any FS accordingly, if eligible, to the extent not already issued, and (3) issue a notice of decision regarding same. These actions shall be taken within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of June, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 1, 2016.

Racine County Department of Human Services  
Division of Health Care Access and Accountability